IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 20688 of 2007(K)

PETITIONER:

RAJANI RAJAN,
AGED 43 YEARS, W/O.M.K.RANJAN,
MANJAKKATTIL HOUSE, P.O.CHMMANNOOR,
KANIPPAYUR (VIA),THRISSUR.

BY ADV. SRI.P.K.SAJEEV

RESPONDENTS:

THE FEDERAL BANK LTD.,
CHOWALLURPADI BRANCH, THRISSUR,
REPRESENTED BY ITS SENIOR MANAGER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.20688 OF 2007 K

Dated this the 11th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order passed in E.A.71/07 and 72/07 in E.P.376/06. These petitions are filed to set aside the ex parte order with a petition to condone the delay of 54 days. The court below rightly found that the provisions of Section 5 of the Limitation Act will not apply to the execution proceedings and therefore there is no power to condone the delay. Now the property is proposed to be sold on 21.7.2007. There is a serious objection for the judgment debtor regarding the upset price fixed for the property. It is true that in case of mortgage sale, portion of the property cannot be ordered to be sold but at the same time the court is bound to consider the objection regarding the value of the property. When the matter is posted for sale and there is objection by the judgment debtor it is desirable at the initial stage itself to give an opportunity so that tomorrow it shall not be raised as a ground for setting aside the sale on the ground of valuation of the property. Now, as per the Civil Procedure Code the court is not bound to fix the upset price but it will be sufficient if the court shows the value quoted by the decree holder as well

as the judgment debtor before putting the property into sale. Therefore, I direct the court below to give an opportunity to the judgment debtor to suggest his price for the property and let it be incorporated in the sale proclamation and the property be sold in auction. Most probably for that purpose a revised proclamation has to be issued which means that the sale posted for 21.7.2007 be adjourned and the sale price shown by the judgment debtor be incorporated and fresh sale be ordered in accordance with the rules. The judgment debtor is directed to file his valuation of the property within a period of ten days from today. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

jj